

 **09hr_SC-En_CRule_10-049_pt01**



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (September 2013)

Senate

Record of Committee Proceedings

Committee on Environment

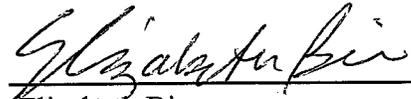
Clearinghouse Rule 10-049

Relating to the vehicle inspection and maintenance program and affecting small business.

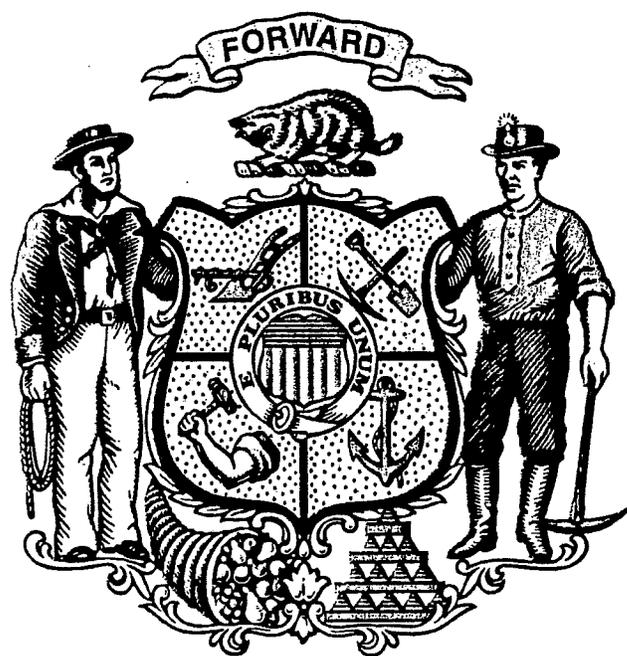
Submitted by Department of Natural Resources.

August 19, 2010 Referred to Committee on Environment.

September 19, 2010 No action taken.



Elizabeth Bier
Committee Clerk



State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Board Order Number: AM-13-10
Clearinghouse Number: CR 10-049
Subject of Rules: A rule-making order to revise Chapters NR 484 and 485, relating to the vehicle inspection and maintenance program.
Date of Transmittal: August 18, 2010

Send a copy of any correspondence or notices pertaining to the rule to:

**Linda Haddix – Department Rules Coordinator
DNR Bureau of Legal Services
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or robert.eckdale@wisconsin.gov

REPORT TO LEGISLATURE

NR 484 and 485, Wis. Adm. Code
Vehicle inspection and maintenance program and affecting small business

Board Order Number: AM-13-10
Clearinghouse Rule Number: CR 10-049

BASIS AND PURPOSE OF THE PROPOSED RULE

A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. However, prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

The Department is proposing this rule to address the significant ozone air quality problem in Sheboygan County. Currently Sheboygan County has the highest ozone concentrations in Wisconsin and the majority of the problem stems from motor vehicle emissions. In response to that problem, the Department proposes to raise the repair cost limit for Sheboygan County, making it identical to the other counties with an I/M program. Additionally, the Department proposes to make several other minor changes to the rule to eliminate several tests that are not necessary.

For all I/M program counties except Sheboygan, the repair cost limit is currently \$788 (\$450 in 1989, adjusted annually each July 1 for inflation, using the federal consumer price index). In Sheboygan County the repair cost limit is fixed at \$200 for vehicles of a 1981 or newer model year and at \$75 for older vehicles. Sheboygan County has lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the aid of federally-mandated reformulated gasoline in the other six counties.

Prior to July, 2009, the I/M program did not issue any cost waivers for vehicles failing the OBD-II inspection. Cost waivers were not issued for OBD-II failures because the Wisconsin Department of Transportation had interpreted s. Trans 131.05(1)(j), Wis. Adm. Code, to mean that to pass a waiver equipment inspection, which is a prerequisite for receiving a waiver, the OBD-II system's malfunction indicator light (MIL) must be operational and non-active (that is, not lit). Such a condition could not exist when a vehicle fails the OBD-II inspection. Therefore, no cost waivers were issued for vehicles failing the OBD-II inspection and once the I/M program became OBD-II-only in July of 2008, the program did not issue any cost waivers at all.

Prior to the I/M program becoming OBD-II-only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD-II test, the DOT's Office of General Counsel has determined that DOT's prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the Department is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the Department is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties would enable Sheboygan County to achieve the emission levels projected in the SIP.

See the Table below for an abbreviated history of the I/M program and the repair cost limit for a waiver of compliance.

Abbreviated History of the I/M Program and Repair Cost Limit

Date	I/M Program Changes
1984	I/M tailpipe testing begins in six counties (Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha Counties) with a repair cost limit set at \$55 for a waiver of compliance.
1993	Repair cost limit for a waiver of compliance increased to \$200 for 1981 and newer model year vehicles and to \$75 for older vehicles.
1994	Tailpipe testing begins in Sheboygan County with the \$200/\$75 repair cost limit for a waiver of compliance. In the six-county area, repair cost limit for a waiver of compliance increased to \$450.
1995	Enhanced transient tailpipe testing (IM240 test) begins in all seven I/M program counties.
2001	OBD-II testing added to the I/M program for 1996 and newer vehicles. Vehicles subject to OBD-II test are not eligible for a waiver of compliance. For 1995 and older vehicles subject to tailpipe testing, the repair cost limits remain at \$450 for the six-county area and \$200/\$75 for Sheboygan County.
2008	I/M program becomes an OBD-II-only test program. No waiver of compliance is provided.
2009	DOT changes policy on whether OBD-II vehicles are eligible for a waiver of compliance. The repair cost limits for a waiver of compliance are now \$788 for OBD-II vehicles in the six-county area and \$200 in Sheboygan County.

SUMMARY OF PUBLIC COMMENTS

A public hearing for the proposed rule was held on June 10, 2010, in Sheboygan, Wisconsin. There were two appearances. Both of these people are residents of Sheboygan County and were commenting as individuals rather than as representatives of a business or other organization. Both were in opposition to the proposed rule. They opposed raising the repair cost limit and maintained that the I/M program is not necessary in Sheboygan County since most of the emissions come from outside of Sheboygan County.

The public comment period for the proposed rule ended on June 21, 2010. In addition to the two people commenting at the public hearing, the Department received written comments from 10 people. At least seven of these 10 are residents of Sheboygan County. As was the case at the hearing, all 10 were commenting as individuals rather than as representatives of a business or other organization. Nine of these 10 commenters expressed opposition to either raising the repair cost limit in Sheboygan County or conducting the I/M program in Sheboygan County or both. The remaining commenter advocated more options for taking the vehicle to the inspection to reduce the need for the vehicle owner to make a special trip. The commenter suggested allowing inspections at local garages and allowing the inspection to occur within a four month time period. These changes, however, are outside the scope of Department rulemaking authority.

Not raising the repair cost limit in Sheboygan County to the level in effect in the other I/M program counties would jeopardize Sheboygan County's emission budget requirements in the state implementation plan. The rule as proposed is equitable to the residents of all seven I/M counties and is a change from the I/M program's previous practice from July, 2001, through June, 2009, of not allowing any cost waivers at all for the OBD-II-equipped vehicles.

The I/M program is required in Sheboygan County under the federal Clean Air Act since Sheboygan County is a moderate nonattainment area. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area. Although much of the emissions do originate outside of Sheboygan County, those originating in Sheboygan County also significantly contribute to ozone formation both within Sheboygan County and downwind of Sheboygan County.

MODIFICATIONS MADE

There were no modifications made to the rule in response to public comments.

APPEARANCES AT THE PUBLIC HEARING

Two persons filed a hearing appearance as follows:

In support:	None
In opposition:	Carter S Pawlus, 414 Erie Ave, Sheboygan, WI 53081 Ed Wackowski, 2632 N 8th St, Sheboygan, WI 53083
As interest may appear:	None

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

The repair cost limit for those counties affected by the I/M program, excluding Sheboygan County, is adjusted for inflation annually based on the consumer price index effective July 1. The Department follows guidance issued by the U.S. Environmental Protection Agency for calculating the adjusted repair cost limit. The inflation adjusted repair cost limit for July, 2009 through June, 2010 was \$787. The

inflation adjusted repair cost limit for July, 2010, through June, 2011 has been calculated, and the rule analysis changed to reflect the new value of \$788.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Legislative Council Rules Clearinghouse submitted their report on the proposed rule. There were no comments or suggested changes.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non-exempt vehicles registered in Sheboygan County. The Department estimates that the proposed rule will increase the average repair cost per failed vehicle in Sheboygan County by \$216.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

The proposed rule will not impose any new requirements on small businesses.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AND AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 484.04 (7), 485.02 (3), (4), (8), (9) and (18), 485.04 (3), (4), (6), (7) (a) (title) and (b), (8), Table 2 and Table 4, and 485.045 (1) (b) and (c); to **renumber and amend** NR 485.04 (7) (a), and 485.045 (1) (intro.); and to **amend** NR 485.04 (2) (intro.) and (9), relating to the vehicle inspection and maintenance program and affecting small business.

AM-13-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: ss. 110.20(13)(b), 285.11(6) and 285.30(2), Wis. Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 110.20(13)(b), 227.11(2)(a), 285.11(1) and 285.30(2), Wis. Stats.

3. Explanation of agency authority: Section 110.20(13)(b), Stats., gives the Department authority to establish the amount of the repair cost limit for the vehicle inspection and maintenance program. Section 227.11(2)(a), Stats., gives agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.30(2), Stats., provides authority for the Department to adopt and revise emission limitations for motor vehicles.

4. Related statute or rule: The related statutes are ss. 110.20, 110.21 and 285.30, Stats. These sections specify requirements for motor vehicle emission inspections in Wisconsin. The first two sections apply to the Department of Transportation and the third section applies to the Department of Natural Resources. A related rule is ch. Trans 131, Wis. Adm. Code. This chapter establishes the Department of Transportation's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

5. Plain language analysis:

A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Initially, all vehicles were inspected by measuring tailpipe emission levels. Since July of 2001, however, all model year 1996 and newer cars and light trucks were inspected by scanning the vehicles' computerized second generation on-board diagnostic (OBD-II) systems. As of July, 2008, the program dropped tailpipe testing entirely and thereby inspected all vehicles by scanning the OBD-II systems. This change was the result of statutory changes in the 2007-2009 biennial budget which exempted from the I/M program the model years of vehicles not federally-required to be equipped with the OBD-II technology (model year 1995 and older cars and light trucks and model year 2006 and older heavy trucks).

Throughout the history of the I/M program, a vehicle failing the tailpipe test was eligible for a waiver of compliance if the cost of repairs to the vehicle exceeded the applicable repair cost limit and if other conditions specified in Trans 131, Wis. Adm. Code, were met. However, prior to July, 2009, the program did not allow such waivers, referred to as "cost waivers", for vehicles failing the OBD-II inspection. The repair cost limits are currently provided in s. NR 485.045, Wis. Adm. Code.

This rule is being proposed in response to two issues relating to the issuing of cost waivers: (1) the lower repair cost limits currently in effect for vehicles registered in Sheboygan County and (2) the I/M program's policy change to allow cost waivers for vehicles failing the OBD-II inspection, starting July, 2009. Descriptions of these two issues follow:

Sheboygan County:

For all I/M program counties except Sheboygan, the repair cost limit is currently \$788 (\$450 in 1989, adjusted annually each July 1 for inflation, using the federal consumer price index). In Sheboygan County the repair cost limit is fixed at \$200 for vehicles of a 1981 or newer model year and at \$75 for older vehicles. Sheboygan County has had lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. However, ozone levels in Sheboygan County have not improved as much as in the other six counties, in part due to the aid of federally-mandated reformulated gasoline in the other six counties. Presently, Sheboygan County has the highest ozone levels in the seven-county I/M program area.

OBD:

Prior to July, 2009, the I/M program did not issue any cost waivers for vehicles failing the OBD-II inspection. Cost waivers were not issued for OBD-II failures because the Wisconsin Department of Transportation had interpreted s. Trans 131.05(1)(j), Wis. Adm. Code, to mean that to pass a waiver equipment inspection, which is a prerequisite for receiving a waiver, the OBD-II system's malfunction indicator light (MIL) must be operational and non-active (that is, not lit). Such a condition could not exist when a vehicle fails the OBD-II inspection. Therefore, no cost waivers were issued for vehicles failing the OBD-II inspection and once the I/M program became OBD-II-only in July of 2008, the program did not issue any cost waivers at all.

Prior to the I/M program becoming OBD-II-only in July, 2008, the program also provided an alternative test, allowing a vehicle to be inspected regardless of the MIL status. However, now that the program administers only the OBD-II test, the DOT's Office of General Counsel has determined that DOT's prior interpretation of s. Trans 131.05(1)(j), Wis. Adm. Code, was contrary to s. 110.20(13), Wis. Stats., since it prevented issuing a cost waiver to every inspected vehicle, regardless of the amount spent on repairs. Consequently, since July, 2009, the DOT has been implementing its new interpretation, thereby allowing cost waivers for vehicles failing by means of a lit MIL. The DOT is also in the process of amending Trans 131.05(1)(j), Wis. Adm. Code, to allow a cost waiver in certain circumstances even if a vehicle's MIL is unable to be turned off; thereby conforming their rule to statutory language.

For the six I/M program counties other than Sheboygan, the DNR is projecting that the resumption of cost waivers would not increase emission levels in those six counties above those projected in the Wisconsin's state implementation plan (SIP) for attaining and maintaining ozone air quality standards. However, the DNR is projecting that the current lower cost limits for Sheboygan County would increase the motor vehicle emissions in Sheboygan County by four percent, enough to exceed the emissions projected in the SIP. Raising the repair cost limit for Sheboygan County to the level used for the other six I/M program counties would enable Sheboygan County to achieve the emission levels projected in the SIP.

Rule Summary:

The DNR is proposing to expand the coverage of the inflation-adjusted, currently \$788, repair cost limit in s. NR 485.045, Wis. Adm. Code, to all counties subject to the I/M program, thereby raising the lower limits for Sheboygan County.

The DNR is also proposing to repeal the emission limitations in s. NR 485.04, Wis. Adm. Code, for the following tests:

- Evaporative system integrity (pressure) test
- Evaporative system purge test
- Steady-state tests

These tests provide no significant additional information regarding vehicle emission performance beyond that already provided by the OBD-II scans. Furthermore, the two evaporative system tests have never been conducted by the I/M program and are intrusive, involving the cutting or crimping of fuel vapor lines. The steady-state tests were effective early in the I/M program, but are no longer conducted. These tests are poor at identifying and diagnosing emission problems in today's vehicles.

6. Summary of, and comparison with, existing or proposed federal regulation:

The proposed rule is consistent with the federal clean air act and the federal regulations for motor vehicle inspection and maintenance programs under that act. These regulations are found in 40 CFR 51.350-51.373.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Illinois is the only adjacent state that has a vehicle inspection and maintenance program. In Illinois the repair cost limit for a waiver is \$450. Thus, the state of Illinois has not adjusted its repair cost limit for the increase in the federal consumer price index since 1989.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

The U. S. Environmental Protection Agency (EPA) has issued guidance for adjusting the repair cost limit for inflation: Calculation of the I/M Waiver Adjusted for CPI, Office of Mobile Sources, U.S. EPA, EPA 420-B-99-011, December, 1999, <http://www.epa.gov/otaq/epg/b99011.pdf>. The DNR has followed this guidance for calculating the repair cost limit. The consumer price index (CPI) adjustment for 1989 to 2009 was 1.7520, resulting in a repair cost limit for July, 2010, through June, 2011, of $\$450 * 1.7520 = \788 .

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

The only economic effect of the proposed rule is that the I/M-related repairs may be more expensive for some vehicles in Sheboygan County that what they would be under the current rule. The proposed rule would not affect repair costs for vehicles in the other six I/M program counties. The DNR estimates that under the proposed rule, the average cost to repair a failed vehicle during 2011 would be \$416 throughout the seven-county program area. The DNR further estimates that under the current rule the average cost to repair a failed vehicle during 2011 would be only \$200 for vehicles in Sheboygan County and the same \$416 value for vehicles in the other six I/M program counties. Thus, the proposed rule is estimated to increase the average repair cost per failed vehicle in Sheboygan County by \$216.

10. Effect on small business:

Small businesses that own vehicles subject to the I/M program have been and will continue to be affected by the I/M program in the same way that individual vehicle owners are affected. The proposed rule may have a small, but not significant, economic impact on those small businesses that own non-exempt vehicles registered in Sheboygan County.

Improved fuel efficiency resulting from the more thorough repairs may offset some of these increased costs.

The proposed rule will not impose any new requirements on small businesses.

11. Agency contact person:

Christopher Bovee, DNR – Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, telephone number: (608) 266-5542; e-mail address: christopher.bovee@wisconsin.gov

SECTION 1. NR 484.04 (7) is repealed.

SECTION 2. NR 485.02 (3), (4), (8), (9) and (18) are repealed.

SECTION 3. NR 485.04 (2) (intro.) is amended to read:

NR 485.04 (2) (intro.) Except as provided in sub. (7) (a), any motor vehicle undergoing the transient emission test may not emit from the exhaust system:

SECTION 4. NR 485.04 (3), (4), (6), and (7) (a) (title) are repealed.

SECTION 5. NR 485.04 (7) (a) is renumbered NR 485.04 (7) and as renumbered NR 485.04 (7) (title) is amended to read:

NR 485.04 (7) (title) FAST-PASS TRANSIENT EMISSION TEST.

SECTION 6. NR 485.04 (7) (b), (8) and Table 2 and Table 4 are repealed.

SECTION 7. NR 485.04 (9) is amended to read:

NR 485.04 (9) **EFFECTIVE DATE FOR OXIDES OF NITROGEN REQUIREMENTS.** An inspection under s. 110.20 (6) (a), Stats., shall include an inspection for emissions of oxides of nitrogen. However, the emission limitations for oxides of nitrogen in subs. (2) (c) and ~~(7) (a) 3.~~ (7) (c) shall apply for compliance purposes only to inspections conducted after May 1, 2001.

SECTION 8. NR 485.045 (1) (intro.) is renumbered NR 485.045 (1) and as renumbered is amended to read:

NR 485.045 (1) **REPAIR COST LIMIT.** For vehicles subject to the motor vehicle emission inspection program under s. 110.20 (6), Stats., the repair cost limit for determining eligibility for a waiver of compliance under s. 110.20 (13), Stats., from the emission limitations of s. NR 485.04, shall be established in accordance with 42 USC 7511a (b) (4) or (c) (3) (C), and regulations promulgated thereunder, and shall equal the following amounts: higher of \$450 or an amount calculated from a base of \$450 and adjusted annually, beginning in 1989, by the percentage, if any, by which the consumer price

index, as defined in section 502 (b) (3) (B) (v) of the Act (42 USC 7661a (b) (3) (B) (v)), has been adjusted.

SECTION 9. NR 485.045(1) (b) and (c) are repealed.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 11. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)